

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-12-060

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**FINAL AGENCY ORDER**

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IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF BALBOA  
INSURANCE COMPANY

Respondent

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THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Balboa Insurance Company ("Respondent"), pursuant to §§ 10-1-203, 204, and 205, as well as §10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the verified MCE Report ("Report") dated October 5, 2011, the written submissions and rebuttals provided November 4, 2011, by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of January 1, 2009, through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a property and casualty insurer in the State of Colorado.
2. On September 23, 2011, in accordance with §§ 10-1-201, 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.

4. The MCE was completed on September 23, 2011. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which the Examiner-in-Charge timely filed with the Division, under oath, on October 5, 2011. The Report was subsequently timely transmitted to Respondent on October 5, 2011.
5. On October 5, 2011, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1) the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On November 4, 2011, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's November 4, 2011, submissions and rebuttals to the Report, and the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as §10-3-1106, C.R.S.
10. This MCE was not conducted as an informal investigation of consumer complaints.
11. This MCE did not proceed and was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.

#### **CONCLUSIONS OF LAW AND ORDER**

12. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified ("Modified Report"). The Commissioner has modified the Report as follows: The number of exceptions was reduced from nine (9) to eight (8), for both Issues J1 and J2 based on additional documentation provided by Balboa regarding the handling of each claim.
13. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
14. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration, the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data,



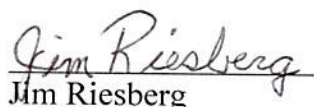
documentation, or information, or to refile the Report pursuant to subsection (1) of § 10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.

15. A copy of the Modified Report is attached to the Final Agency Order and is incorporated herein. The October 5, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its submission and rebuttals on November 4, 2011. The Respondent was required to cure the violations set forth below in the time frame and manner set forth below.
16. Issue J1: Failure, in some instances, to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed, and/or to promptly provide a reasonable explanation of the basis in the insurance policy for denial of a claim or for the offer of a compromise settlement. This failure constitutes a violation of § 10-3-1104, C.R.S., and Colorado Insurance Regulation 5-1-14. The Respondent was required to provide written evidence to the Division that it has revised its procedures to ensure that all denied claims are denied within a reasonable time and/or the insureds are provided with a prompt explanation of the basis for the denial or the offer of a compromise settlement pursuant to Colorado insurance law. The Division's records indicate the Respondent has submitted a compliance plan which, if fully implemented, appears to comply with the corrective actions ordered for this issue.
17. Issue J2: Failure, in some instances, to effectuate fair and equitable settlement of claims in which liability has become reasonably clear. This failure constitutes a violation of § 10-3-1104, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised its procedures to ensure that all claims are settled in a fair and equitable manner when liability has become reasonably clear as required by Colorado insurance law. The Division's records indicate the Respondent has submitted a compliance plan which, if fully implemented, appears to comply with the corrective action ordered for this issue.
18. Issue J3: Failure, in some instances, to pay homeowners claims promptly. This failure constitutes a violation of §10-3-1104, C.R.S., and Colorado Insurance Regulation 5-1-14. The Respondent was required to provide written evidence to the Division that it has revised its procedures to ensure that all claims payments will be paid promptly when liability has become reasonably clear as required by Colorado insurance law. The Division's records indicate the Respondent has submitted a compliance plan which, if fully implemented, appears to comply with the corrective actions ordered for this issue.
19. The issues and violations described in paragraphs 16 through 18 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of twenty-six thousand and no/100 dollars

(\$26,000.00) for the cited violations of Colorado law. The \$26,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to § 24-34-108, C.R.S., for a total balance due of twenty-eight thousand six hundred and no/100 dollars (\$28,600.00). The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order.

20. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Report, as modified and adopted by this Final Agency Order, dated December 5, 2011.
21. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law. The Commissioner reserves the right to conduct a hearing under § 10-3-1107, C.R.S., regarding Issues J1, J2, and J3 at some future date.
22. Copies of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
23. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.
24. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

**WHEREFORE:** It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated October 5, 2011, subsequently adopted by the Commissioner with modifications on December 5, 2011, are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the adopted Modified Report is hereby approved and effective this 5<sup>th</sup> day of December, 2011.

  
Jim Riesberg

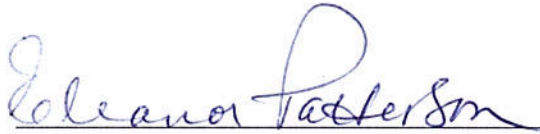
Commissioner of Insurance



**CERTIFICATE OF MAILING**

I hereby certify that on the 5<sup>th</sup> day of December, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-12-060 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF BALBOA INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Tom Myrick, President  
Balboa Insurance Company  
PO Box 19702  
Irvine, CA 92623-9702



Eleanor Patterson  
Market Regulation Administrator  
Division of Insurance